MULTIMEDIA UNIVERSITY

STUDENT IDENTIFICATION NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2015/2016

BBL3614 – COMPANY LAW & SECRETARIAL PRACTICE

8 OCTOBER 2015
9:00 a.m. – 12:00 noon
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. This Question paper consists of 3 pages with **2 sections** only.
2. **Section A** consists of **ONE (1) compulsory question**.
3. **Section B** consists of **FOUR (4) questions** and **answer THREE (3) questions only**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Please write all your answers in the Answer Booklet provided.

SECTION A: ONE (1) COMPULSORY QUESTION

QUESTION 1

Ah Chong, who owns 90% of the shares in Ah Chong Sdn Bhd, has decided to hire his son as the company's Company Secretary. The remaining shareholders are very displeased by Ah Chong's decision because the son is merely a Form 5 graduate with no working experience. Ah Chong told these shareholders that Company Secretaries are just clerks, after all. With regards to the responsibilities and duties of a Company Secretary, do you agree with Ah Chong? Do Company Secretaries play an important role in a company today? Discuss on the responsibilities and duties of a Company Secretary towards the Company and third parties and the qualifications to become a company secretary.

(25 Marks)

SECTION B: ANSWER THREE (3) QUESTIONS

QUESTION 2

a) The statutory derivative claim, introduced under the Companies (Amendment) Act 2007, provides a welcome form of protection for minority shareholders, who have lacked sufficient protection due to the Rule in *Foss v Harbottle*. Discuss.

(12 Marks)

b) In some circumstance, a member can apply to the court to compulsorily wind up the company even though the company is not insolvent. Explain.

(13 Marks)

(Total 25 Marks)

QUESTION 3

You are the General Manager of EverGreen Sdn. Bhd. As a matter of protocol you are to advise the newly appointed auditor for the company on the following:-

(a) Duties of a company auditor including liabilities to the company and the extent of liability to a third party.

(20 marks)

Continued...

(b) The rights of the auditor in its execution of his duty and the Company's obligation to the auditor.

(5 marks)

(Total 25 Marks)

QUESTION 4

(a) Rainbow Sdn. Bhd. operates a wholesale nursery growing and selling plants. Seth, Peter Pan and Rachael are the shareholders and directors. Seth manages the company's day-to-day operations. Peter Pan, is in charge of the nursery. Rachael is a non-executive director who does not take an active part in the management or operations of the company.

The company has been doing very well. However, six months ago, a competing business opened nearby and since then the company's profits have dropped considerably. Seth thinks that the company should move to larger premises in a different area. Without consulting Peter Pan or Rachael, he starts looking for new premises and he decides the first place he inspects is perfect, although the price is more than the company can afford. Seth does not think this will be a problem, because there is no competition nearby and he expects that profits will recover immediately. Seth calls a board meeting and tells Peter Pan and Rachael that moving will solve all the company's problems and that this property he has seen is absolutely perfect for the company. He says they will have to act quickly as there is another interested purchaser. Seth does not tell Peter Pan and Rachael that he only looked at this one property. He is so enthusiastic that both Peter Pan and Rachael agree to the proposal even though Rachael is doubtful as they have been rushed into making a decision without being given time to consider. Peter Pan agrees to Seth's proposal without really understanding the financial implications.

Rainbow Sdn. Bhd. purchases the new premises but, because of continuing dry weather, its profits remain low. Rachael is becoming worried about her obligations as a director, especially if Rainbow's financial position deteriorates any further.

(i) Advise Rachael on her position in respect of any breaches of her common law or statutory duty of care and diligence as a director and whether her decision to agree to the purchase of the new premises would be protected by section 132 (1B).

(15 marks)

Continued...

(ii) Advise Peter Pan as to his position in respect of any breaches of his duty of care and any possible liability.

(5 marks)

(b) Section 139 of the Malaysian Companies Act provides that a Company Secretary must be a natural person of full age. What does this mean? Discuss the other requirements made by the law for the appointment of a Company Secretary.

(5 marks)

(Total 25 Marks)

QUESTION 5

a) Forever Sdn Bhd has an issued capital of RM3,000,000, made up of 2,000,000 RM1.00 ordinary and 1,000,000 RM1.00 preference shares. Over the past few years the company has made huge profits. The company is contemplating reducing its capital by paying off preference shareholders.

Advise Forever Sdn Bhd as to:

(i) How a company may reduce its capital under the *Companies Act 1965*, and in particular whether the proposed reduction would be lawful.

(6 marks)

(ii) The protection, if any, afforded to creditors who might likely to be affected by the reduction.

(6 marks)

b) To what extent does the *Companies Act 1965* prohibit companies from giving financial assistance for the purchase of their own shares?

(13 marks)

(Total 25 Marks)

End of Paper